

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:)
Clifton Lind et al.)
)
Serial No.: 10/726,979) Group Art Unit: 3714
)
Filed: December 3, 2003) Examiner: Eric M. Thomas
)
FOR: METHOD, APPARATUS, AND)
PROGRAM PRODUCT FOR)
CONDUCTING BINGO GAMES WITH) Confirmation No.: 5074
PRE-ASSIGNED BINGO CARDS AND)
PRE-MATCHED BINGO CARD SETS)

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Commissioner for Patents
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BRIEF OF APPELLANTS

This is an appeal from the Final Office Action mailed April 16, 2007 (the "Final Office Action"), rejecting claims 1 through 20 in the above-identified application. Appellants submit this brief to the Board of Patent Appeals and Interferences ("Brief") within the second month following the two-month period following the Notice of Appeal filed August 31, 2007. A petition for a two-month extension of time is being submitted concurrently herewith. The fee of \$255.00 due under 37 C.F.R. §41.20(b)(2) is being submitted concurrently with this Brief together with the two-month extension fee.

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I. REAL PARTY IN INTEREST (37 C.F.R. §41.37(c)(1)(i))

The above-described patent application is assigned to Multimedia Games, Inc., the real party in interest.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. §41.37(c)(1)(ii))

There is no related Appeal or Interference before the United States Patent and Trademark Office.

III. STATUS OF CLAIMS (37 C.F.R. §41.37(c)(1)(iii))

The status of the claims is as follows:

Allowed Claims: None

Claims to which Objections apply: None

Claims withdrawn from consideration: None

Claims Canceled: None

Claims Rejected: 1 through 20

ClaimsAppealed: 1 through 20

IV. STATUS OF AMENDMENTS (37 C.F.R. §41.37(c)(1)(iv))

There have been no claim amendments filed subsequent to the Final Office Action mailed

April 16, 2007.

1 **V. SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. §41.37(c)(1)(v))**

2 The application includes three independent claims, claims 1, 8, and 14 each of which is
3 summarized as follows. All page and line number references below are to the original
4 application, and drawing references are to the original drawings all filed December 3, 2003.

5 Claim 1

6 Claim 1 is directed to a method which includes matching a first set of game designations
7 with a set of bingo card representations to produce a matched card set. (p. 5, lines 6-7). The
8 matched card set includes a number of game play records with each game play record
9 corresponding to a different one of the bingo card representations. (p. 5, lines 9-10; p. 35, lines
10 1-4; Fig. 10, ref. no. 102) Each game play record includes a result indicator indicating a result of
11 the match between the first set of game designations and the respective bingo card representation.
12 (p. 5, lines 10-13; p. 35, lines 6-12; Fig. 10 ref. no. 105). The method set out in claim 1 also
13 includes receiving a number of game play requests. (p. 5, lines 16-17; p. 14, lines 1-2; p. 22,
14 lines 13-19; Fig. 6, block 67). Each of the received game play requests is associated with a
15 respective player and a respective bingo card representation from the set of bingo card
16 representations. (p. 5, lines 15-19; p. 7, lines 10-15; p. 28, lines 3-11). For each received game
17 play request, the method of claim 1 further includes assigning the respective player the game play
18 record corresponding to the respective bingo card representation with which the respective player
19 is associated. (p. 6, lines 14-20; p. 22, lines 13-16; Fig. 6, block 67).

20 Claim 8

21 Claim 8 is directed to a program product stored on a computer readable medium. (p. 1,
22 lines 16-17). The program product includes matching program code and game play assignment

1 program code. The matching program code is executable to match a first set of game
2 designations with a set of bingo card representations to produce a matched card set. (p. 20, lines
3 12-18; p. 35, line 19 - p. 36, line 2). This matched card set includes a number of game play
4 records. (p. 5, lines 9-10). Each game play record corresponds to a different one of the bingo
5 card representations and includes a result indicator indicating a result of the match between the
6 first set of game designations and the respective bingo card representation. (p. 5, lines 10-13; p.
7 35, lines 6-12; Fig. 10, ref. no. 105). The game play assignment program code is executable to
8 assign game play records from the matched card set such that a respective game play record is
9 assigned in response to each respective game play request. (p. 22, lines 13-18; Fig. 6, block 67).
10 Each respective game play request is associated with a respective player and a respective bingo
11 card representation in the matched card set. (p. 5, lines 15-19; p. 7, lines 10-15; p. 28, lines 3-
12 11). Also, the respective game play record assigned for a respective game play request is
13 assigned to the player associated with the bingo card representation with which the game play
14 request is associated. (p. 6, lines 14-20; p. 22, lines 13-16).

15 Claim 14

16 Claim 14 is directed to a gaming system comprising a number of player stations (40 in
17 Fig. 3), a central processing system (34, 36 in Fig. 3), and a communications system (20, 17, 18a,
18 18b, 42 in Fig. 3). (p. 11, line 19 - p. 12, line 11; p. 16, line 14 - p. 17, line 4; Fig. 3). Each of
19 these elements is defined in accordance with 35 U.S.C. §112, paragraph six. Each player station
20 functions to enable a player to initiate a game play request and to display results of a game play
21 upon receipt of a game play record. (p. 16, line 14 - p. 17, line 4; and Figs. 3-4). Each game play
22 request initiated by a player station is associated with the initiating player and with a respective

1 respective bingo card representation in a set of bingo card representations. (p. 28, lines 3-11).
2 The central processing system functions to store a set of game play records, each game play
3 record corresponding to a respective bingo card representation which has been matched to a first
4 set of game designations. (p. 22, lines 9-11; Fig. 6, block 66). The central processing system
5 also functions to assign a respective game play record from the set of game play records to a
6 player in response to a game play request initiated by the respective player at one of the player
7 stations. (p. 22, 13-18; Fig. 6, block 67). The respective game play record that is assigned to a
8 respective player is the game play record corresponding to the bingo card representation that is
9 associated with that particular player. (p. 6, lines 14-20; p. 22, lines 13-16). The
10 communications system is operatively connected to the central processing system and to each of
11 the player stations and functions to facilitate communications between the central processing
12 system and each player station. (p. 11, line 19 - p. 12, line 2; p. 15, line 18 - p. 16, line 3; Figs. 3-
13 4, ref. nos. 17, 18a, 18b, 20, 42).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. §41.37(c)(1)(vi))

Claims 1-4, 7-11, and 14-16 are rejected on the ground of nonstatutory obviousness-type double “patenting as being unpatentable over claims 1, 3, 7-10, 12, 16-18, 21-22, 28 and 34-36 of U.S. Patent No. 6,802,776 to Lind et al. (the “776 patent”).

Claims 1 through 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0111207 to Lind et al. (the "207 publication").

Claims 1 through 20 stand rejected under 35 U.S.C. §102(e) as being anticipated by the 776 patent.

VII. ARGUMENT (37 C.F.R. §41.37(c)(1)(vii))

A. CLAIMS 1-4, 7-11, and 14-16 ARE NOT OBJECTIONABLE FOR NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING OVER CLAIMS FROM THE 776 PATENT

A nonstatutory obviousness-type double patenting rejection is appropriate for a given claim where the given claim is not patentably distinct from a reference claim because the given claim is merely an obvious variation of the reference claim. *See In re Goodman*, 11 F.3d 1046, 29 U.S. P.Q. 2d 1226, 2015-16 (Fed. Cir. 1993). In the present case, the rejected claims clearly include limitations not taught or suggested by the reference claims. Thus the present claims are not merely obvious variations on the subject matter claimed in the 776 patent. The nonstatutory obviousness-type double patenting rejections are therefore in error and should be reversed.

1 Independent claim 1 is directed to a method that requires the following limitations:

- 2 (a) matching a first set of game designations with a set of bingo card representations
3 to produce a matched card set, the matched card set including a number of game
4 play records with each game play record corresponding to a different one of the
5 bingo card representations and including a result indicator indicating a result of
6 the match between the first set of game designations and the respective bingo card
7 representation;
8 (b) receiving a number of game play requests, **each respective game play request**
9 **being associated with a respective player and a respective bingo card**
10 **representation from the set of bingo card representations;** and
11 (c) **for each game play request, assigning the respective player the game play**
12 **record corresponding to the respective bingo card representation with which**
13 **the respective player is associated** (Emphasis added).

14 Claim 1 of the 776 patent is directed to a method of producing and utilizing a set of game play
15 records for a bingo-type game which employs a first set of game designations selected from a
16 pool of available game designations and further employs a set of bingo card representations,
17 where each bingo card representation in the set of bingo card representations includes a number
18 of card designations which are selected from the pool of available game designations. Claim 1 of
19 the 776 patent requires the following steps:

- 20 (a) matching the first set of game designations with card designations of the
21 respective bingo card representations to produce a matched card set, the matched
22 card set including a number of game play records with each game play record
23 corresponding to a different one of the bingo card representations and including a
24 result indicator indicating a result of the match between the first set of game
25 designations and the card designations for the respective bingo card representation
26 to which the respective game play record corresponds;
27 (b) storing data representing the matched card set in a data storage device; and
28 (c) **assigning game play records from the matched card set in a random order,**
29 **each game play record assigned to a respective player among a number of**
30 **players participating in the bingo-type game in response to a game play**
31 **request initiated by the respective player** (Emphasis Added).

32 The fundamental difference between the subject matter of the present claims and the
33 claims of the 776 patent is immediately apparent upon comparing the bolded portions of the

1 claims set out above. Specifically, claim 1 of the 776 patent requires that the game play records
2 be assigned in a random order and that each game play record is assigned to a respective player
3 among a number of players participating in the bingo-type game in response to a game play
4 request initiated by the respective player. In contrast, element (b) of claim 1 of the present
5 application requires that each respective game play request that is received, that is, each
6 incoming game play request, is associated with both a respective player and with a respective
7 bingo card representation from the set of bingo card representations. Element (c) of claim 1 of
8 the present case then requires that for each received game play request the respective player is
9 assigned the game play record corresponding to the respective bingo card representation with
10 which the respective player is associated. Thus the present claims do not merely require that the
11 game play records are assigned to incoming game play requests as in the claims of the 776 patent.
12 Rather, the incoming game play requests in the presently claimed gaming system each specify a
13 respective bingo card representation, and the game play record for that particular bingo card
14 representation is assigned to the player in response to the game play request.

15 The Final Office Action mailed April 16, 2007 (the “Final Office Action”), provides the
16 following rationale for the obviousness-type double patenting rejections.

17 The claims are not patentability [sic] distinct from one another because it would
18 have been obvious at the time of the invention to implement a similar bingo game
19 with a plurality of game play requests associated with respective players and
20 request multiple bingo cards in order to provide [sic] multiplayer bingo system
21 with multiple ways to win. One would be motivated because a multiplayer bingo
22 system allows for players to enjoy a bingo game in a traditional setting. Final
23 Office Action at p. 3, lines 6-12.

24 The emphasis on multiplayer bingo in this rationale indicates that the Final Office Action has
25 misconstrued the differences between the presently claimed subject matter and the subject matter

1 claimed in the 776 patent. Both the claims in the 776 patent and the present claims are directed
2 to multiplayer bingo systems. However, the present claims require that each incoming game play
3 request is associated with a respective bingo card representation and the game play records are
4 assigned on that basis rather than on a random basis as in the system described in the 776 patent.
5 The Final Office Action appears to entirely miss this distinction between the present claims and
6 the subject matter claimed in the 776 patent. The Final Office Action certainly does not provide
7 any reason as to why it would have been obvious to modify the subject matter claimed in the 776
8 patent so that each incoming game play request was associated with a particular bingo card
9 representation.

10 The Advisory Action (the “Advisory Action”) mailed August 13, 2007, in the present
11 application offers the following rationale for maintaining the obviousness-type double patenting
12 rejections.

13 However, as discussed in the previous office action, although the conflicting
14 claims are not identical, they are not patentably distinct from each other because
15 the subject matter of the conflicting claims are [sic] similar and, at times, almost
16 identical in phrasing and terminology. Therefore, the nonstatutory obviousness-
17 type double patenting rejection will not be withdrawn. Advisory Action,
18 continuation page at lines 4-7.

19 The Appellants respectfully submit that this statement from the Advisory Action does not
20 represent a proper rationale for making an obviousness-type double patenting rejection. It
21 appears that the rejections are based only on the similarities in the claimed subject matter. The
22 Advisory Action and Final Office Action both entirely fail to recognize the differences between
23 the present claims and the claims of the 776 patent and also fail to provide any reason as to why

1 it would have been obvious to modify the system claimed in the 776 patent so that each incoming
2 game play request was associated with a particular bingo card representation.

3 Although the above discussion is based on a comparison of claim 1 from the present
4 application to claim 1 of the 776 patent, with one exception, the above arguments apply similarly
5 to the other claims of the present case and the remaining claims of the 776 patent. That
6 exception is that some of the claims of the 776 patent do not specifically require that the game
7 play records are assigned “in a random order” in response to incoming game play requests. For
8 example, claim 19 of the 776 patent requires at element (b) “assigning a number of the matched
9 bingo card representations from the matched card set, each matched bingo card representation
10 being assigned to a respective player in response to a game play request of the respective player.”
11 However, all of the claims of the present application require that each received game play request
12 is associated with a respective bingo card representation (element (b) of claim 1, element (b) of
13 claim 8, and element (a) of claim 14). This arrangement in which the incoming game play
14 requests are each associated with a respective bingo card representation is neither claimed nor
15 disclosed in the 776 patent.

16 For all of these reasons the Appellants respectfully submit that claims 1-4, 7-11, and 14-
17 16 are not objectionable on the ground of nonstatutory obviousness-type double patenting over
18 the claims of the 776 patent, and believe that the nonstatutory obviousness-type double patenting
19 rejections stated in the Final Office Action should be reversed.

1 B. CLAIMS 1 THROUGH 20 ARE NOT ANTICIPATED BY THE CITED ART

2 It is noted that the 207 publication is the published version of the application which
3 matured into the 776 patent. Thus the 776 patent represents essentially the same prior art as the
4 207 publication. The arguments presented below will refer primarily to the 776 patent, however,
5 these arguments apply with equal force to the 207 publication.

6 Claim 1

7 As discussed above in connection with the double-patenting rejections, element (b) of
8 claim 1 of the present application requires that each game play request, that is, each incoming
9 request for a play in the game, is associated with a particular player and with a respective bingo
10 card representation from the set of bingo card representations. Element (c) of the Appellants'
11 claim 1 requires assigning to a particular player the game play record corresponding to the
12 respective bingo card representation that is associated with the particular player. The 776 patent
13 fails to disclose either of these limitations. In contrast to the method set out in Appellants' claim
14 1, the 776 patent discloses that the game play requests need only include sufficient information to
15 identify the matched card set from which a game play record is to be assigned (776 patent at col.
16 13, lines 49-58; 207 publication at ¶0063) and that the game play records are randomly assigned
17 to players (776 patent at col. 16, line 64 to col. 17, line 4; 207 publication at ¶73).

18 The Final Office Action and the Advisory Action fail to address the differences between
19 the subject matter required in claim 1 and the system disclosed in the 776 patent (and 207
20 publication). In addressing the Appellants' arguments regarding the differences between claim 1
21 and the subject matter disclosed in the 776 patent, the Final Office Action makes the following
22 comment.

1 However, the "776" patent states that the central computer receives information
2 from various gaming floor devices in a respective group, which leads to the
3 central computer receiving game play requests from the devices in the group and
4 sends record information to the respective device (col. 6, lines 52-64). The "776"
5 patents [sic] also teaches that the central computer allows players to participate in
6 the games available by purchasing bingo card representations through his or her
7 corresponding game play records (col. 8, lines 1-11). Therefore, the game system
8 taught by the "776" patent provides the limitations of the claimed invention. Thus,
9 the examiner maintains the "776" [sic] renders the claimed invention anticipated.
10 Final Office Action at p. 19, lines 4-12.

11 The Appellants agree that the system disclosed in the 776 patent uses game play requests
12 initiated by players, and further agree that when a player is assigned a game play record they are
13 essentially purchasing a pre-matched bingo card representation. However, the facts that the 776
14 patent discloses player initiated game play requests and also discloses that players purchase pre-
15 matched bingo card representations simply does not amount to a disclosure that the game play
16 requests are each associated with a respective bingo card representation. There is nothing in the
17 776 patent (and the 207 publication) to suggest that the game play requests in that system are
18 associated with any particular bingo card representation. In fact, the 776 patent and 207
19 publication each specifically disclose that the game play records (and thus pre-matched bingo
20 card representations) are assigned randomly in response to incoming game play requests (776
21 patent at col. 16, line 64 to col. 17, line 4; 207 publication at ¶73).

22 For these reasons, the Appellants respectfully submit that claim 1 is not anticipated by the
23 776 patent and is also not anticipated by the 207 publication, and that claim 1 is entitled to
24 allowance along with its respective dependent claims, claims 2 through 7. The Appellants
25 therefore respectfully submit that the anticipation rejections of claims 1 through 7 are in error and
26 should be reversed.

1 Independent Claims 8 and 14

2 Independent claims 8 and 14 are directed to a program product and apparatus,
3 respectively, that require limitations similar to those of claim 1. In particular, claims 8 and 14
4 require that each game play request is associated with a particular bingo card representation from
5 the set of bingo card representations as required by claim 1. Claims 8 and 14 additionally require
6 that the game play record assigned to a respective player in response to a game play request
7 corresponds to the bingo card representation associated with the respective player, also as
8 required by claim 1. As discussed above, the 776 patent and 207 publication do not disclose
9 these limitations. Thus, the arguments presented above with respect to claim 1 apply with equal
10 force to claims 8 and 14.

11 For these reasons, the Appellants respectfully submit that independent claims 8 and 14
12 are not anticipated by either the 776 patent or the 207 publication, and that claims 8 and 14 are
13 entitled to allowance along with their respective dependent claims, claims 9 through 13 and
14 claims 15 through 20. The Appellants therefore respectfully submit that the anticipation
15 rejections of claims 8 through 13 and claims 14 through 20 are in error and should be reversed.

VIII. CONCLUSION

For all of these reasons the Appellants submit that claims 1 through 20 are entitled to allowance and respectfully request that the Board reverse the decision of the Examiner rejecting these claims.

Respectfully submitted,

The Culbertson Group, P.C.

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1 **IX. CLAIMS APPENDIX (37 C.F.R. §41.37(c)(1)(viii))**

2

3 1. A method including the steps of:

- 4 (a) matching a first set of game designations with a set of bingo card representations
5 to produce a matched card set, the matched card set including a number of game
6 play records with each game play record corresponding to a different one of the
7 bingo card representations and including a result indicator indicating a result of
8 the match between the first set of game designations and the respective bingo card
9 representation;
- 10 (b) receiving a number of game play requests, each respective game play request
11 being associated with a respective player and a respective bingo card
12 representation from the set of bingo card representations; and
- 13 (c) for each game play request, assigning the respective player the game play record
14 corresponding to the respective bingo card representation with which the
15 respective player is associated.

16

17 2. The method of claim 1 further including the steps of:

- 18 (a) assigning game play records from the matched card set until a game winning
19 player holds a game play record corresponding to a matched bingo card
20 representation having a game ending pattern; and

- 1 5. The method of claim 3 further including the step of assigning additional game play
2 records from the additional matched card set in response to a game play request which
3 next follows a game play request for which is assigned a game ending game play record.
4
- 5 6. The method of claim 3 further including the step of assigning game play records from the
6 matched card set for a set period of time and then assigning additional game play records
7 from the additional matched card set after that set period of time.
8
- 9 7. The method of claim 1 further including the steps of:
10 (a) matching a number of additional game designation sets with the set of bingo card
11 representations to produce a number of additional matched card sets, each
12 additional matched card set including a number of respective additional game play
13 records with each additional game play record in a given one of the additional
14 matched cards sets corresponding to a different one of the bingo card
15 representations and including a result indicator indicating a result of the match
16 between the respective additional game designation set and the respective bingo
17 card representation; and
18 (b) storing each additional matched card set so that respective additional game
19 records are available for assignment in response to a respective game play request.
20
- 21 8. A program product stored on a computer readable medium, the program product
22 including:

1 10. The program product of Claim 8 wherein the matching program code matches an
2 additional game designation set with the set of bingo card representations to produce an
3 additional matched card set, the additional matched card set including a number of
4 respective additional game play records with each additional game play record
5 corresponding to a different one of the bingo card representations and including a result
6 indicator indicating a result of the match between the additional game designation set and
7 the respective bingo card representation.

8

9 11. The program product of Claim 10 wherein the game play assignment program code
10 responds to a game play request from a given player who has been assigned a game play
11 record from the matched card set by assigning the given player an additional game play
12 record from the additional matched card set, the assigned additional game play record
13 corresponding to the respective bingo card representation with which the given player is
14 associated.

15

16 12. The program product of claim 11 wherein the game play assignment program code
17 assigns a respective additional game play record from the additional matched card set in
18 response to a game play request which next follows a game play request for which is
19 assigned a game ending game play record from the matched card set.

20

21 13. The program product of claim 10 wherein the game play assignment program code
22 assigns game play records from the matched card set for a set period of time and then

1 assigns additional game play records from the additional matched card set after that set
2 period of time.

3

4 14. A gaming system comprising:

- 5 (a) a number of player stations, each player station for enabling a player to initiate a
6 game play request and for displaying results of a game play upon receipt of a
7 game play record, each game play request initiated by a player station being
8 associated with the initiating player and with a respective bingo card
9 representation in a set of bingo card representations;
- 10 (b) a central processing system for storing a set of game play records, each game play
11 record corresponding to a respective bingo card representation which has been
12 matched to a first set of game designations, the central processing system also for
13 assigning a respective game play record from the set of game play records to a
14 player in response to a game play request initiated by the respective player at one
15 of the player stations, the respective game play record assigned to the player being
16 the game play record corresponding to the bingo card representation that is
17 associated with that player; and
- 18 (c) a communications system operatively connected to the central processing system
19 and to each of the player stations for facilitating communications between the
20 central processing system and each player station.

- 1 15. The gaming system of claim 14 wherein:
- 2 (a) the central processing system stores a number of additional sets of game play
3 records, each game play record in a respective additional set of game play records
4 corresponding to a respective one of the bingo card representations which has
5 been matched to an additional set of game designations; and
- 6 (b) the central processing system also assigns a respective game play record from one
7 of the additional sets of game play records to a player in response to a game play
8 request initiated by the respective player at a respective one of the player stations,
9 the respective game play record assigned to the player from the additional set of
10 game play records being the game play record in that additional set corresponding
11 to the bingo card representation that is associated with that player.
- 12
- 13 16. The gaming system of claim 14 wherein the matched card set includes a game ending
14 game play record corresponding to a bingo card representation from the set of bingo card
15 representations and wherein the central processing system withdraws the matched card set
16 from play in response to the assignment of the game ending game play record.
- 17
- 18 17. The gaming system of claim 14 further including a gaming floor component for directing
19 a bingo card request to the central processing system in response to a bingo card request
20 input entered for a respective player, and wherein the central processing system responds
21 to the bingo card request by associating a respective bingo card representation from the

1 bingo card representation set with the respective player for whom the bingo card request
2 input was entered.

3

4 18. The gaming system of claim 17 wherein the gaming floor component comprises one of
5 the player stations.

6

7 19. The gaming system of claim 17 further including a point of sale terminal distinct from the
8 player stations and wherein the gaming floor component comprises the point of sale
9 terminal.

10

11 20. The gaming system of claim 14 wherein the central processing system is also for
12 maintaining a database correlating each of a number of respective players to one or more
13 bingo card representations with which the respective player is associated.

1 **X. EVIDENCE APPENDIX (37 C.F.R. §41.37(c)(1)(ix))**

2 The Appellants have not relied upon any evidence in this appeal according to 37 C.F.R.
3 §41.37(c)(1)(ix).

1 **XI. RELATED PROCEEDINGS APPENDIX (37 C.F.R. §41.37(e)(1)(x))**

2 There is no related Appeal or Interference before the United States Patent and Trademark
3 Office.